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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 EUGENE BRIAN GARVIE,

10 Petitioner,

Case No. C18-1371JLR

11 v.

12 STATE OF WASHINGTON.,

13 Respondent.

**ORDER DENYING MOTION TO
PROCEED IFP ON APPEAL**

13 Before the court is Petitioner's *pro se* motion for leave to proceed *in forma pauperis*
14 ("IFP") on appeal. (Mot. (Dkt. # 16).) The court has considered the motion, relevant portion of
15 the record, and the applicable law. Being fully advised, the court **DENIES** the motion.

16 On September 17, 2019, Petitioner filed a writ for petition of habeas corpus challenging a
17 2006 state criminal judgment and sentence. (Petition (Dkt. # 1).) The court declined to serve the
18 habeas petition because it contained several deficiencies and appeared to be barred by the statute
19 of limitations. (10/16/18 Order (Dkt. # 5).) At Petitioner's request the court granted him over
20 ninety days to file an amended complaint. (11/15/18 Order (Dkt. # 7).) On February 15, 2019,
21 prisoner Alvin Hegge acting as "next friend" submitted an amended habeas petition on behalf of
22 Petitioner. (Am. Petition (Dkt. # 8).)

23 On March 1, 2019, Magistrate Judge Brian A. Tsuchida filed a report recommending

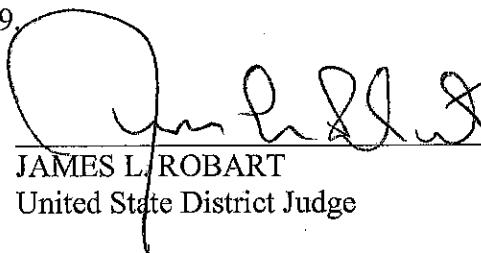
1 dismissal with prejudice of Petitioner's habeas petition on the grounds it was barred by the
2 statute of limitations and equitable tolling was not appropriate. (3/1/19 Order (Dkt. # 9) at 6-8.)
3 In addition to finding the petition untimely, Judge Tschudia also recommended dismissal of
4 habeas claims 3,4,5, and 6 on the grounds that Petitioner had not presented these claims to the
5 state courts and the claims were thus unexhausted. (*Id.* at 10-11.) Judge Tsuchida further
6 recommended denying claim 7 because it is a claim outside the "core of habeas corpus." (*Id.* at
7 7.) The court also recommended denying Mr. Hegge "next friend" status because there was
8 nothing showing a significant relationship between Petitioner and Mr. Hegge and no evidence
9 Petitioner was suffering from a mental defect that substantially affected his capacity to make
10 intelligent decisions. (*Id.* at 9-10.) Finally, the Court recommended a certificate of appealability
11 not be issued. (*Id.* at 11-12.)

12 On March 22, 2019, Petitioner filed objections to Judge Tsuchida's Report and
13 Recommendation. (Obj. (Dkt. # 12).) On March 25, 2019, the court adopted the report and
14 recommendation and dismissed the habeas petition with prejudice. (3/25/19 Order (Dkt. # 10).)
15 In his motion to proceed IFP on appeal, Petitioner argues the clerk failed to docket his objections
16 to the report and recommendation until after the court issued its order adopting the report and
17 recommendation and dismissing the case. (*See Mot.*) This is not a basis to grant Petitioner's
18 request to proceed IFP on appeal. The court already considered this argument and issued an
19 order concluding that nothing in Petitioner's objections alters the court's decision to adopt the
20 report and recommendation and to dismiss the habeas petition. (3/26/19 Order (Dkt. # 13).) The
21 court has also considered the other arguments Petitioner raises in his motion to proceed IFP on
22 appeal and concludes Petitioner has presented nothing showing there is any basis to conclude the
23 court erred in dismissing the petition for writ of habeas corpus and denying Mr. Hegge next

1 friend status.

2 Accordingly, the court certifies that Petitioner's appeal is not taken in good faith and
3 **DENIES** Petitioner's motion to proceed IFP on appeal. *See* Federal Rule of Appellate Procedure
4 24(4)(B); *see also* 28 U.S.C. § 1915(e)(2).

5 DATED this 30 day of April, 2019



JAMES L. ROBART
United States District Judge